IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4541 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD

Versus

AMINABEN RAHIMBHAI KADIWALA

Appearance:

MR HARIT J BHATT for Petitioner
MR MTM HAKIM for Respondent No. 1
MR MP PRAJAPATI for Respondent No. 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 14/06/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

This appeal, with the consent of the learned advocates for the parties, can be finally disposed of at the admission stage.

Shri Harij Bhatt, learned counsel for the appellant and Shri M.T.M. Hakim, learned counsel for respondents no. 1 to 4 and Shri M.P.Prajapati, learned counsel for respondent NO. 5 have been heard.

The scope of inquiry in this appeal is very limited. Learned counsel for the appellant has frankly conceded that the quantum of compensation cannot be challenged by the insurance company, the appellant. He has, however, contended that since the insurance company was impleaded before the tribunal after about ten years, there can be no liability of the insurance company to pay interest from the date of the claim petition till it was impleaded. That is the only point which requires examination.

Certain dates are material. The accident occurred on 2nd March, 1986. The claim petition was filed on 30th July, 1986. The appellant, Oriental Insurance Company was impleaded before the tribunal on 29th March, 1996. After impleadment, the tribunal issued notice to the appellant on 30th April, 1996. On these facts, learned counsel for the appellant contended that since about ten years elapsed between the date of accident and notice, the insurance company cannot be held liable for payment of interest during this interval. He has placed reliance upon the judgment of the learned Single Judge rendered in First Appeal No. 851 of 1997, Oriental Insurance Co. versus Diwaliben Jentilal and others decided on 13th November, 1997. In this case, the facts were that the accident took place on 26th May, 1988 while the insurance company was impleaded as party to the proceedings on 8.5.1995 i.e. after seven years from the date of accident. On these facts, and referring to the provisions of section 149 (2) of the Motor Vehicles Act, the learned Single Judge was of the view that since the insurance company had no notice of the fact of the vehicular accident and of the petition having been filed for the purpose of compensation by the injured person, interest cannot be awarded against the insurance company. The learned Single Judge was further of the view that from the language of this section, prima facie, it appears that the insurance company cannot be saddled with the liability prior to the period beginning from 8th May,

1995. With this finding, the award of the tribunal was modified by the learned Single Judge.

As against this, learned counsel Shri Hakim has brought to our notice apex court's judgment in Urmila Pandey and Ors. vs. Khalil Ahmad and Ors. [1994] 4 SCC 204 and has urged that in this case, the insurance cover was filed before the apex court after 25 years and on these facts, the apex court reversing the judgment of the high court and the court below, awarded compensation as well as interest @ 18% p.a. against the insurance company.

We have considered both these cases and the factual aspects of the case before us. It is undisputed that the accident took place on 2nd March, 1986. It is equally undisputed that the claim petition was preferred on 30th July, 1986. There is no dispute regarding the fact that the appellant, insurance company, was impleaded on 29th March, 1996 and thereafter, the tribunal gave notice to the appellant on 30th April, 1996. There was, thus, about ten years' delay in impleading the insurance company, appellant. However, since the impleadment was granted on 29th March, 1996, it will relate back to the date of presentation of the claim petition i.e. 30th July, 1996 and it will be deemed by a fiction of law that the insurance company was already before the tribunal on 30th July, 1986. There seems to be no reason to distinguish compensation and interest and hold that the compensation is payable by the insurance company from the date of the petition but not the interest.

We have also examined the provisions of section 171 of the Motor Vehicles Act which empowers the tribunal to direct in addition to the amount of compensation simple interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. From this section, discretion has been given to the tribunal to award interest at such rate from the date of the petition as it may specify in the order. This discretion has to be exercised reasonably and not arbitrarily. The tribunal, to our mind, has exercised the discretion reasonably and there was no justification before the tribunal not to allow interest against the appellant from the date of the petition.

We have also examined the provisions of section 149 (2) of the Motor Vehicles Act. It reads as under:

"S.149 (2)

No sum shall be payable by an insurer under sub section (1) in respect of of any judgment or award unless before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-....."

Plain meaning of the opening words "no sum" under this provision has to be strictly interpreted. If this is the intention of the legislature that no sum is payable, then, it is difficult to understand the logic that the compensation is payable by the insurance company but not interest. What is the intention of the legislature in enacting this provision is that if the notice is not given to the insurance company, the insurance company has a right to approach the tribunal for impleadment and after the insurance company is impleaded, it can defend the action on the grounds enumerated under this sub section. Learned Single Judge has not taken care of the provisions of section 149 (2) of the Act and, therefore, we are unable to accept the contention of the learned counsel for the appellant that the interest is not payable by the insurance company for the period the insurance company was not impleaded.

To our mind, the matter is covered by the apex court's decision in Urmila Pandey and Others versus Khalil Ahmed and Others (supra). In this case also, the insurance company was impleaded before the tribunal but at late stage. The exact dates are not available from the judgment of the apex Court. However, the fact remains that the insurance company was impleaded before the tribunal after ten years but the delay cannot be said to be a ground for disallowing the claim of interest. In Urmila Pandey's case (supra), the matter was seriously contested and it was found that the insurance cover note was not placed before the tribunal or before the High Court. On the other hand, it was placed before the apex court after about 25 years of the accident. In the view of apex court, this fact itself was not sufficient to make the insurance company liable to pay the awarded money. The apex Court further found that there was contemporaneous evidence on record to show that the cover note is genuine. In the case before us, there is no

dispute that the vehicle was insured and the policy was in force on the date of the accident. The genuineness of the policy has not been challenged before us. Learned counsel Mr.Hakim has pointed out that in addition to thi, the owner of the vehicle also claimed compensation from the insurance company for damage to the vehicle. On these facts, he contended that it cannot be assumed that the insurance company had no notice of the vehicular accident. The apex court in Urmila Pandey's case, on the established facts and also on the basis of the cover note produced after 25 years, awarded compensation against the insurance company together with interest at the rate of 18% per annum. Even if for a moment the award of interest by apex court is considered obiter dicta, in that case, obiter dicta of the apex court is binding upon the Division Bench of this Court and, therefore, we are unable to uphold the contention of the learned counsel for the appellant that the interest is not payable during the period the insurance company was not impleaded. The aid from the case of Oriental Insurance Company versus Diwaliben Jayantilal (supra) taken by the learned counsel for the appellant, to our view, cannot be permitted.

For the reasons stated, we are of the view that the tribunal was justified in awarding interest against the insurance company from the date of the claim petition.

No other point is pressed before us. As such, we do not find any merit in this appeal. The appeal is hereby dismissed with no order as to costs.

Consequent upon the failure of this appeal, the tribunal is authorized to pass suitable orders for disbursement/investments of the amount deposited by the appellant.

14.06.2000. (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas